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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43137
Plaintiff-Respondent,)	
)	Canyon County Case No.
vs.)	CR-2014-22010
)	
TYLER JACOB BROTHERTON,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Has Brotherton failed to show that the district court abused its discretion when it denied his Rule 35 motion seeking reduction of the fixed portion of his sentence?

ARGUMENT

Brotherton Has Failed Show That The District Court Abused Its Sentencing Discretion

A. Introduction

The district court sentenced Tyler Brotherton to four years with two years determinate upon his conviction for intimidating a witness, and retained jurisdiction. (R., pp. 122-24.) Brotherton timely appealed. (R., pp. 128-30.) The district court later relinquished jurisdiction. (2/24/16 Aug., p. 3.) Brotherton subsequently filed a Rule 35

motion seeking a reduction of his fixed term by “3 to 6 months” or to June 12, 2016, “to match my fixed release date” in another case. (6/1/16 Aug. pp. 1-3.) The district court, noting it was not supported by additional information, denied the motion on its merits. (6/1/16 Aug., pp. 4-6.)

B. Standard Of Review

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant’s entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant’s probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)).

C. Brotherton Has Shown No Abuse Of The District Court’s Discretion

If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and this court reviews the denial of the motion for an abuse of discretion. State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). To prevail on appeal, Brotherton must “show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.” Id. Because Brotherton did not support his motion with new information, he has failed to show an abuse of discretion.

Even if the merits of the motion are considered, as did the district court, no abuse of discretion is shown for the reasons articulated by the district court in the Order Denying Rule 35 Motion. (6/1/16 Aug., pp. 1-3.)

CONCLUSION

The state respectfully requests this Court to affirm the judgment of the district court.

DATED this 17th day of June, 2016.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 17th day of June, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JASON C. PINTLER
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
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KKJ/dd